

December 18, 1995
FOR PUBLICATION

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

NORMA SUE HARRISON,
(
Plaintiff - Appellee,
(
(
(Rutherford Circuit
(
v. (Hon. Robert E. Co
(Chancellor
(
(No. 01S01-9412-CV
JAMES NESBITT HARRISON,
(
Defendant - Appellant.

For Plaintiff - Appellee Defendant - App

Roger W. Hudson William Kennerly
Murfreesboro Murfreesboro

O P I N I O N

COURT OF APPEALS REVERSED;
REMANDED TO TRIAL COURT. REID, J.

This divorce case presents for
of the Court of Appeals, affirming
one-half undivided interest in a tr
marital property within the meaning
4-121(b)(1)(B) (1991). This Court
the husband's separate property, no
requiring that the Court of Appeals

The parties were married in 19
reside in Rutherford County, where
located. The husband, James Nesbit
employee of South Central Bell Tele
beginning wage was approximately \$2
annual compensation was \$31,000. T
wife, Norma Sue Harrison, was emplo
from 1957 until the birth of the pa
and from 1977 until the time of the
lived in Memphis during the first 1
then, in 1973, they returned to Rut

The husband and wife experienc

trouble beginning in 1973. The wife
approximately one year during 1980
children, who now are non-dependent

On January 19, 1993, the circuit
Rutherford County entered an order
absolute divorce on the mutual alle
differences. The only issue on appeal is
undivided interest in certain land
separate property of the husband.

In 1947, ten years prior to the
the husband's grandparents deeded a
125 acres to the husband's parents
the death of the survivor, to the h
equally. The property in question,
portion of the original 125-acre fa
the 45 1/2-acre tract is leased to
leased to Waffle House, and the rem
undeveloped.

In 1968, Interstate Highway I-
across the 125-acre farm. Part of
eminent domain. A note in the princ

¹Tenn. Code Ann. § 36-4-129 (1991)

dated September 18, 1961, was paid to the condemnation award. The trial finding regarding the purpose of the construction of the interstate highway is the value of the farm. For example, the value of the tract increased from \$7,000 at the time of the marriage to \$1,361,750 at the time of the trial. The parties acknowledge and the record reflects that the sole cause of the increase in value of I-24.

Prior to the construction of the highway, the farm was used to pasture cattle owned by the parties' parents. Prior to his death, the father worked at a grocery store on a part-time basis. The mother was employed as a lab technician until 1961. She lived with the parties during the trial. After a period of disability, after which she lived in a nursing home where she was employed as a housemother.

Although no records of the cattle sales were presented at trial, the testimony from the sale of cattle was used primarily to show the value of the farm and to pay the indebtedness of the parties' children returned to Rutherford County.

w e e k e n d s f o r t h e p u r p o s e o f h e l p i n g
t e n d t h e c a t t l e , r e p a i r f e n c e s , a n d
c o n n e c t e d w i t h t h e f a r m . T h e h u s b a n d
p r i o r t o t h e c o n s t r u c t i o n o f I - 2 4 .
s u b s e q u e n t t o t h e c o n s t r u c t i o n o f I
d i v o r c e .

A f t e r t h e c o n s t r u c t i o n o f I - 2 4
d i v o r c e , p o r t i o n s o f t h e o r i g i n a l f a r m
S a l e s i n c l u d e d : D a y s I n n - \$ 1 3 5 , 0 0 0
S h o n e y ' s I n n - \$ 1 5 0 , 0 0 0 ; S o u t h g a t e
W a f f l e H o u s e l o t w a s l e a s e d f o r \$ 4 5 0
l o t f o r \$ 8 2 5 p e r m o n t h . P r i o r t o t h e
m o t h e r , p r o c e e d s f r o m t h e s a l e o f t h e
b y a g r e e m e n t b e t w e e n t h e h u s b a n d , h i s
b r o t h e r . S u b s e q u e n t t o t h e m o t h e r ' s
d i v o r c e , t h e p r o c e e d s w e r e d i v i d e d
h u s b a n d a n d h i s b r o t h e r .

W i t h p r o c e e d s r e c e i v e d f r o m s a l e
p o r t i o n s o f t h e p r o p e r t y , t h e h u s b a n d
c o n t a i n i n g 1 5 4 a c r e s , t i t l e t o w h i c h
a n d w i f e a s t e n a n t s b y t h e e n t i r e t y
i n t h e r e c o r d a s t h e p a r t i e s ' " h o m e
r e s i d e n c e p r i o r t o t h e d i v o r c e . T h e

that the home place was marital pro
assets found to be marital property
allocations were made:

Wife: cash and certificates of
\$215,930.31; common stock - \$26,474
of I-24 property to Southgate Ventu
- \$5,643; cemetery lots; automobile
husband's South Central Bell retire
\$12,500; and one-half of the husband
the 45 1/2-acre portion of the orig
fourth interest was valued by the c
miscellaneous personalty; and attor

Husband: cash - \$4,550; proce
24 property to Southgate Ventures -
place valued by the court at \$248,1
\$5,258; automobile and trucks; live
supplies, valued by the court at \$4
husband's retirement valued at \$12,
half interest in the 45 1/2-acre tr
\$340,437.50; and other miscellaneou

As stated previously, the only
appeal is a one-half undivided inte

t r a c t , w h i c h u n d i v i d e d i n t e r e s t i s
i s s u e i s d e t e r m i n e d b y a p p l i c a t i o n
p r o v i s i o n s o f T e n n . C o d e A n n . § 3 6 -

(b) (1) (B) " M a r i t a l p r o p e r t y " i s
i n c o m e f r o m , a n d a n y i n c r e a s e
d u r i n g t h e m a r r i a g e , o f p r o p e r t y
d e t e r m i n e d t o b e s e p a r a t e p r o p e r t y
a c c o r d a n c e w i t h s u b d i v i s i o n (b) (1)
e a c h p a r t y s u b s t a n t i a l l y c o n t r i b u t e s
i t s p r e s e r v a t i o n a n d a p p r e c i a t i o n
t h e v a l u e o f v e s t e d p e n s i o n , r e t i r e m e n t
o r o t h e r f r i n g e b e n e f i t r i g h t s
d u r i n g t h e p e r i o d o f t h e m a r r i a g e .

(C) A s u s e d i n t h i s s u b s e c t i o n
" s u b s t a n t i a l c o n t r i b u t i o n " m a y
b u t n o t b e l i m i t e d t o , t h e d i r e c t
i n d i r e c t c o n t r i b u t i o n o f a s p o u s e
h o m e m a k e r , w a g e e a r n e r , p a r e n t
f i n a n c i a l m a n a g e r , t o g e t h e r w i t h
o t h e r f a c t o r s a s t h e c o u r t h a s
j u r i s d i c t i o n t h e r e o f m a y d e t e r m i n e .

. . .

(2) " S e p a r a t e p r o p e r t y " m e a n s

(A) A l l r e a l a n d p e r s o n a l
p r o p e r t y o w n e d b y a s p o u s e b e f o r e
m a r r i a g e ;

(B) P r o p e r t y a c q u i r e d i n
f o r p r o p e r t y a c q u i r e d b e f o r e t h e
m a r r i a g e ;

(C) I n c o m e f r o m a n d a p p r e c i a t i o n
o f p r o p e r t y o w n e d b y a s p o u s e
m a r r i a g e e x c e p t w h e n c h a r a c t e r i z e d
m a r i t a l p r o p e r t y u n d e r s u b d i v i s i o n
(b) (1) ; a n d

(D) P r o p e r t y a c q u i r e d b y
a t a n y t i m e b y g i f t , b e q u e s t ,
d e s c e n t .

The trial court found the 45 1/2 acre tract the original farm to be marital property based its finding that the wife had contributed to the property's preservation and that the wife had helped the husband with the care of the cattle and that payment was secured by a deed of trust on the funds owned by the husband and wife.

The Court of Appeals disagreed with the trial court's decision that those circumstances would convert the husband's estate interest in the property. The Court of Appeals found that the amount whereby the 45 1/2-acre tract was sold during the marriage of the parties was determined that amount to be \$677,300.

This Court finds that application of the facts of this case requires that the husband's interest in the 45 1/2-acre tract is separate property rather than marital property.

Both the trial court and Court of Appeals correctly found that the husband's interest in the property originally was separate property of the husband.

in the property acquired by the husband that estate was acquired are significant determinations. The estate acquired subject to life estates in Settlers rehearsal Walker 849 S.W.2d 766, 769 (Tenn. 1994) further conveyance to the husband. In the conveyance, the husband's parents owned the property until the father's death owned a life estate in the property until the death of the husband's mother, the owner in fee of a one-half undivided interest in Soen g l e v, 890 S.W.2d 668, 669 (1994); 21 Tenn. Remains, Reversions Interests 24 (1985). Consequently, the property was the husband's separate property before marriage, with subsection 36-4²-and (was 2) therefore, the husband's separate property.

The trial court found that the husband contributed to the preservation and maintenance of the husband's separate property within subsections (b)(1)(B) and (C), thereby converting

²Though not determinative of the issue presented in the case, the husband's interest in the property from his gift to the wife within the meaning of subsection 36

property. The Court of Appeals found not support the trial court's conclusion that the wife's activities were sufficient to convey marital property. Implicit in the court's decision is the conclusion that the wife's activities substantially contribute to the preservation of the value of the property. That finding of the Court of Appeals is consistent with the acknowledgment by the parties that the sole cause of the wife's interest in the construction of I-24. There is no doubt in the court that payments on the note secured by the farm was for the purpose of "preparing the estate in the farm."

The Court of Appeals correctly held that the husband's estate in the property in the marriage, but that court failed to consider the conditions which must be met before a life interest in property becomes marital property. Subsection (b)(1)(B) provides that

³Pretermitted is any discussion of a circumstance that the wife's activities in the farm was subject to the exclusive use of the husband's parents as life tenants. The court in Meorrrow v. Potts, 370, 381, 665 (1976) held that a life tenant who is a quasi trustee for the remainderman may be allowed to so deal with the property as to remain in the property. Meorrrow v. Potts, 370, 381, 665 (1976) (Tenn. 1976).

during marriage is marital property substantially contributed to its appreciation."

Even though the Court of Appeals wife did not substantially contribute to the appreciation of the property, it, not the value whereby the farm increase construction of I-24 was marital property, not permit the caonny husband that value marriage constitutes marital property only wife constitutes marital property only wife substantially contributed to its appreciation. Edhis v. Edhis, 748 S.W.2d 424 (Tenn. 1988), the issue was whether the value was limited to the cost of the husband's improvements or extended to the entire amount where the value increased during marriage. In explaining

The only condition imposed by the statute for treating any increase in value during the marriage as marital property is the provision, "if the wife substantially contributed to the preservation and appreciation of the property." This condition was amply supported by the evidence. As above mentioned, the Court of Appeals in its own findings concluded that the husband had contributed to the improvements to the big house property. This clearly proved

husband had "substantially contributed to its preservation and appreciation as found by the trial judge. The evidence satisfied the conditions required but it did not limit the husband's right to share in the appreciation of the property during the marriage to the amount which he had thus contributed to its maintenance and repair. Having established that the condition had been complied with, the husband was entitled to share in the whole appreciation and value of the big house property during the

Id. at 427. Application of Estelle to the facts of this case would require that the evidence proved that the wife had contributed to the preservation and appreciation of the property in an amount of the increase in value would be substantial, but, since the evidence does not show that the wife substantially contributed to the preservation of the property, the increase in its value is not property.

The conclusion is that the wife has a separate interest in the 45 1/2-acre tract which is her own separate property, not marital property.

The decision of the Court of Appeals is reversed and the case is remanded to the trial court.

C o s t s o f a p p e a l a r e t a x e d a g a i n

R e i d , J .

C o n c u r :

A n d e r s o n , C . J . , D r o w o t a , B i r c h ,
a n d W h i t e , J J .